
CHAPTER 38

EXPUNGEMENT OF ADULT ARREST RECORDS AND JUVENILE RECORDS

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See Chapter 44 for details on I.C. 35-38-9, The “Expungement” Statute.

EXPUNGEMENT OF ADULT ARREST RECORDS

I.C. 35-38-5

The 2014 amendments repeal the provisions allowing expungement of adult arrest records under I.C. 35-38-5-1 through I.C. 35-38-5-4.

The provisions allowing for the expungement and destruction of adult criminal records when the arrested person is not convicted (I.C. 35-38-5-5.5) were repealed effective 7/1/2013. This chapter is included only to provide a reference for handling orders that were issued when the statutory provision was in effect.

A verified petition for expungement of arrest records may be filed when an individual is arrested but no criminal charges are filed or all criminal charges filed against the individual are dropped for certain statutory reasons. I.C. 35-38-5-1. The petition is filed in the court in which the criminal charges were filed, or if no charges were filed, then in a court with criminal jurisdiction in the county where the arrest occurred. The petition should be filed under the case number of the original criminal case, but if a case number had not been assigned, then the petition should be assigned an MC case type case number. The petition must be served on the law enforcement agency that made the arrest and the state central repository for records.

When the law enforcement agency receives the petition, it must notify the court of any agency to which to which records related to the arrest were forwarded. The clerk is required to immediately send a copy of the petition to each of those agencies. Any agency wishing to oppose the expungement has 30 days from the date of the filing of the petition to notify the court of its opposition and serve the petitioner with a copy. The court may summarily grant the petition, set the matter for hearing, or summarily deny the petition if it makes certain determinations under the statute.

If the petition is granted, the pertinent law enforcement agency must deliver to the individual or destroy all fingerprints, photographs, or arrest records in its possession within 30 days of receiving the order. No information concerning the arrest may be placed or retained in the state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional or statewide law enforcement agency.

Under Ind. Administrative Rule 9(G)(1)(g) (*now* 9(G)(2)(b)), all expungement orders entered in criminal or juvenile proceedings are confidential and excluded from public access.

Although the statute expressly provides that granting the petition does not require any change in the record of any court in which the criminal charges were filed, it does not specifically prohibit the court from ordering expungement of court records.

If court records pertaining to the case are to be expunged, then all the records pertaining to the case, including the Chronological Case Summary (CCS), will be destroyed under the terms of the expungement order. To replace the original CCS, a replacement CCS should be created containing only the case number, a statement that the case had been expunged, and the date the expungement order was entered. To replace all the orders concerning the expunged case in the RJO, the original orders should be removed and replacement pages should be inserted containing only the same information as noted on the replacement CCS.

EXPUNGEMENT OF JUVENILE RECORDS

Records created as a result of an allegation that a child is a delinquent or a child in need of services may be expunged under I.C. 31-39-8-1 *et seq.* A person may petition the juvenile court to remove from the court's files, the files of any law enforcement agency and the files of any other person who has provided services to a child under court order, those records pertaining to the child's involvement in juvenile court proceedings. If the court grants the expungement, the statute directs that the court order each law enforcement agency and each person who provided treatment for the child to send that person's record to the court. The records then may either be destroyed or given to the person to whom the record pertains.

Expungement orders entered in juvenile cases are confidential under Administrative Rule 99(G)(1)(g) (*now* 9(G)(2)(b)) just as they are in adult criminal proceedings.

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